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MARINE ENVIRONMENT PROTECTION  
COMMITTEE  
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Agenda item 4

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## HARMFUL AQUATIC ORGANISMS IN BALLAST WATER

### Comments on the draft international convention for the control and management of ship's ballast water and sediments

Submitted by the United States

#### SUMMARY

**Executive summary:** This document provides the United States' views on key principles raised during the deliberations of the Ballast Water Working Group at MEPC 43 as it worked to draft text of an international convention for the control and management of ship's ballast water and sediments.

**Action to be taken:** Paragraph 8

**Related documents:** MEPC 42/8/9, MEPC 43/4 and MEPC 43/4/4

1 The United States wishes to comment on several key principles raised during the deliberations of the Ballast Water Working Group at MEPC 43 as it worked to draft text of an international convention for the control and management of ships ballast water and sediments.

2 At MEPC 43 there were fruitful discussions of the key principles of a ballast water management instrument. While these principles are complex, the submissions to MEPC 43 and discussions in the working group suggest that there may be much common ground among countries on the key concepts. The United States believes that a clearer understanding of some of the basic concepts presented previously will facilitate negotiations at MEPC 44. Using a question/answer format, this paper attempts to clarify further the United States' views on which ships should the instrument apply to; what ships need to do; and the structure of the instrument.

### 3 TO WHICH SHIPS SHOULD THE INSTRUMENT APPLY?

Except for those ships engaged solely in domestic trade and sovereign immune vessels, the instrument would apply to *all* ships that carry ballast water. Parties would have enforcement obligations for violations of the requirements with respect to vessels flying their flag or entering their ports. Exceptions to certain requirements of the instrument would be permitted. Examples are provided in section 5 below.

#### 4 WHAT DO SHIPS TO WHICH THE INSTRUMENT APPLIES HAVE TO DO?

##### .1 Safety is paramount.

The convention must not require a ship to do anything that will threaten the safety or stability of the ship, its crew, or its passengers. For example, the instrument must contain language allowing a ship to not perform specific ballast water management procedures when the officer in charge reasonably decides that they could not be performed because of adverse weather, vessel architectural design, equipment failure, or any other extraordinary conditions.

##### .2 A ship must have and follow a ballast water management plan.

While the level of detail may vary from ship to ship, all ships covered under the convention must have a document explaining how they will manage their ballast water and sediments. The minimum requirements of this plan should be set out in a *Regulation*. The details of what should be included in the plan should be set out in *Guidelines* that are developed by the Committee. This provision for a plan could be modeled after the International Convention for the Prevention of Pollution from Ships (MARPOL), Annex V, Regulation 9, and Annex I, Regulation 26.

As the term “*consistent with*” is open to a wide-range of interpretations, there should not be a legal requirement that a ship’s ballast water management plan must be “*consistent with*” a model plan. Development of a model plan would be useful, but only as information circulated to States or as an annex to a resolution by the Diplomatic Conference that adopts the treaty.

##### .3 A ship must perform a primary ballast water management method.

A ship’s Ballast Water Management Plan must take into account the methods for ballast water management that the ship is to carry out under normal circumstances. The management method(s) must be recognized as being acceptable methods in the convention itself.

The convention should provide for a range of ballast water management methods. These methods would be those that are found effective in preventing or minimizing the unwanted transfer of harmful organisms (i.e. ballast water exchange, minimal release of ballast water in certain circumstances, and discharge of ballast water to reception facilities.) A mechanism must be provided for the development, testing and acceptance of new ballast water management technologies and methods (section 5.2, below). It must also allow for the removal of methods.

##### .4 A ship must perform supplemental ballast water management practices when possible.

The instrument should also contain a list of supplemental (precautionary) ballast water management practices. These practices would include things such as the removal of ballast sediments on a timely basis; the minimization of the uptake of ballast water in areas of known outbreaks or where the propellers may stir up benthic sediments or if the ship is in shallow water; and attempt to avoid discharge of ballast that has been loaded in another port.

##### .5 A ship must keep a ballast water record book.

To aid in monitoring and determining whether the measures being taken pursuant to the convention are effective, ships must maintain a Ballast Water Record Book. A ship’s ballast management actions would be recorded in the book and be available for inspection.

## **5 SHOULD THERE BE ANY EXCEPTIONS TO THE REQUIREMENTS?**

### **.1 Exceptions should be allowed.**

The instrument must be flexible. To do this, it would include specifically tailored exceptions that would except certain ships from one or more ballast management techniques, but not the *entire* instrument. These exceptions would relate directly to the operational situation causing the need for the exception. Possible exceptions could include safety concerns, ships involved in emergency situations, fixed and floating platforms under certain circumstances, and ships operating under regional agreements consistent with the treaty. It is important that the instrument include what a ship is to do if it is necessary to use an exception. For example, discharge only the minimum amount of ballast necessary for safe operations, notify the affected party, and record the fact that the exception was exercised in the Ballast Water Record Book.

### **.2 Promising new techniques would be permitted for a testing and evaluation period.**

To encourage the development of improved ballast water management technologies, a port State(s) would be permitted to allow a ballast water management technique as an alternative to already accepted techniques. The port State(s) wanting to use this exception must have a reasonable belief, based on scientific and technical studies demonstrating its feasibility, that the technique is at least as effective as other techniques available to the ship. The port State(s) would be required to monitor the method's effectiveness, and within 3 years provide the Organization with the particulars of the technique and a scientific evaluation. This would be circulated to the Parties for their information and appropriate action.

## **6 CAN PARTIES ESTABLISH BALLAST WATER MANAGEMENT AREAS?**

### **.1 Ballast water management areas that meet the objectives of the instrument would be authorized.**

It is critical that adoption of the ballast water management area concept does not reduce the instrument's effectiveness and conforms with the relevant provisions of the United Nations Convention on the Law of the Sea. To that end, before establishing a ballast water management area, Part(ies) should demonstrate, based on scientific and technical studies, that the use of a ballast water management area will be effective in preventing or minimizing the unwanted transfer of harmful aquatic organisms. Two possible scenarios for ballast water management areas follow:

- Parties within a region may decide based on oceanographic, ecological, and other related characteristics that ballast water from ships operating solely within such region do not pose a threat as any transfers may simply be the relocation of existing species within their established range. In this situation the parties may decide not to require a specific treatment or operational technique on ships operating within that region.
- Alternatively, ballast water management areas may also be appropriate where a ship should not load ballast. Situations where this would be warranted could be areas with known outbreaks, infestations, or populations of harmful organisms (e.g., toxic algal blooms), nearby sewage outfalls, or areas where tidal flushing is poor.

**.2 Activity in a ballast water management area cannot adversely impact the waters of another State.**

No ballast water management area or technique would be allowed or required that adversely impacts the waters under the jurisdiction of another State, unless the affected State has been notified and has not objected. The area or technique(s) should be monitored to assess its effectiveness at preventing or minimizing the transfer of harmful organisms. If the monitoring shows that the ballast water management area or the technique being used in the area is not effective, changes would be required.

**7 WHAT STRUCTURE OR FORM SHOULD THE INSTRUMENT TAKE?**

The instrument should be in the form of a stand-alone convention. The body of the treaty should contain those obligations that are to be amended by an explicit acceptance procedure. Annexes should also be included which contain those items that can, on a scientific and technical basis, be amended by a tacit procedure. For example, the annexes might include the primary ballast water management techniques. This could facilitate the testing and evaluation of new techniques and expedite the approval of those that are shown, on a scientific and technical basis, to be effective in preventing and minimizing the transfer of harmful aquatic organisms and pathogens.

**8 ACTION REQUESTED OF THE COMMITTEE**

The Committee is invited to consider the above comments and take action as appropriate.

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